

**7 PJI 4 | RICO | CONSPIRACY TO CONDUCT THE AFFAIRS OF THE ENTERPRISE
- 18 USC §1962(D)**

[Plaintiff] has brought a claim against [Defendant] for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO.

[Plaintiff] specifically claims that [Defendant] violated RICO §1962(d) by conspiring to violate RICO §1962(c). I've already given you instructions on the elements of a violation of §1962(c). Now you must decide if [Plaintiff] has proved by a preponderance of the evidence whether two or more of the defendants engaged in a conspiracy to violate RICO §1962(c).

Generally, a RICO "conspiracy" is an agreement by two or more people to commit an unlawful act. Put another way, it's a kind of partnership for illegal purposes. Every member of the conspiracy becomes the agent or partner of every other member. [Plaintiff] doesn't have to prove that all the people named in the complaint were members of the conspiracy - or that those who were members made any kind of formal agreement. The heart of the conspiracy is the making of the unlawful plan itself. And [Plaintiff] doesn't have to prove that the conspirators were successful in carrying out the plan.

To prove a RICO conspiracy, [Plaintiff] must prove each of the following three facts by a preponderance of evidence:

First, you must find that two or more people agreed to try to accomplish an unlawful plan to engage in a pattern of racketeering activity.

And second, you must find that a defendant agreed to the overall objective of the conspiracy.

Or, as an alternative to the second element, you must find that a defendant agreed with at least one other defendant to commit two predicate acts as part of the conspiracy.

[Plaintiff] may show an "agreement to the overall objective of the conspiracy" by circumstantial evidence that a defendant must have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity. If [Plaintiff] proves agreement on an overall objective, then it isn't necessary that a defendant agree to personally commit two predicate acts.



A defendant can also engage in a RICO conspiracy even if [Defendant] didn't agree to the conspiracy's overall objective. It's enough that [Defendant] engaged in a part of the conspiracy with at least one other defendant by committing at least two predicate acts - alone or with someone else.

While the essence of a RICO conspiracy is an agreement to further an endeavor that, if completed, would satisfy all the elements of a substantive RICO violation, [Plaintiff] doesn't have to offer direct evidence of an agreement.

The conspiracy's existence can be inferred from the participants' conduct. But a defendant must objectively manifest, through words or actions, [Defendant]'s agreement to participate in the enterprise's affairs.

[Plaintiff] doesn't have to show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated the details of the scheme, its object, or purpose, or the precise means by which the object or purpose was to be accomplished. [Plaintiff] also doesn't have to establish that all the means or methods alleged to carry out the alleged conspiracy were, in fact, agreed on, or that all the means or methods that were agreed on were actually used or put into operation. And [Plaintiff] doesn't have to prove that all persons alleged to be conspiracy members were actually members or that alleged conspirators succeeded in accomplishing their unlawful objectives.

But it isn't enough if the evidence shows only that the alleged conspirators agreed to commit the acts of racketeering [Plaintiff] alleges, without more, or that they agreed to participate in the affairs of the same alleged enterprise. It doesn't matter that the alleged conspirators participated in the conduct of the affairs of the alleged enterprise through different or dissimilar acts of racketeering activity so long as the alleged racketeering acts would - if actually committed - create a "pattern of racketeering activity" as I've defined it.

A defendant can become a member of a conspiracy without knowing all the unlawful scheme's details or without knowing the names and identities of all the other alleged conspirators. If [Plaintiff] proves by a preponderance of the evidence that a particular defendant has knowingly joined the alleged conspiracy, it doesn't matter that [Defendant] may not have participated in the alleged conspiracy or scheme's earlier stages.



Mere presence at the scene of some transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, doesn't necessarily prove the existence of a conspiracy. A person who doesn't have knowledge of a conspiracy, but who happens to act in a way that advances some object or purpose of conspiracy, doesn't become a conspirator.

[Plaintiff] doesn't have to prove that a defendant actually committed any of the acts that [Defendant] may have agreed to commit to establish [his/her] membership in the conspiracy.

To determine whether there was a conspiracy, you must consider all the evidence in the case. If you find that there was a conspiracy, then you can attribute the statements or acts of the [names of co-conspirators] to [Defendant]. If you find that there was not a conspiracy, then you can't attribute the statements or acts of [names of co-conspirators] to [Defendant].

If you find the conspiracy didn't exist, then you must find for [Defendant]. But if you're satisfied that the conspiracy existed, you must determine who the members of the conspiracy were.

If you find that a particular defendant is a member of another conspiracy, but not the one [Plaintiff] charged, then you can't find that defendant liable in this case. Put another way, you can't find that a defendant violated §1962(d) unless you find that [Defendant] was a member of the conspiracy charged - not some other separate conspiracy.

If you decide that a defendant conspired to violate RICO, you must decide whether that conspiracy caused [Plaintiff] injury. The damages [Plaintiff] may recover are those caused by the predicate acts committed by members of the conspiracy that injured [Plaintiff] in [his/her/its] business or property.

If you conclude that a defendant joined in a conspiracy to violate RICO, [Defendant] is responsible for all damages caused by predicate acts committed by members of the conspiracy that caused injury to [Plaintiff]. It isn't necessary that every predicate act caused damage to [Plaintiff], but [he/she/it] can only recover for damages caused by a predicate act committed by a conspiracy member.

In your consideration of this conspiracy claim, you should first determine whether the alleged conspiracy existed. If you conclude that a conspiracy existed as alleged, you should next determine



whether each defendant under consideration willfully became a member of that conspiracy.

((Rev. 03/2022) | *Judicial Council of the United States Eleventh Judicial Circuit*)

Annotations and Comments

Pursuant to 18 U.S.C. §1964(c), “[a]ny person injured in his business or property by reason of a violation of section 1962... may sue... in any appropriate United States district court” and may recover treble damages and a reasonable attorney’s fee. See, Sedima, S.P.R.L., 173 U.S. at 496. However, no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962. This exclusion concerning securities does not apply to an action against any person that is criminally convicted in connection with a securities fraud. 18 U.S.C. §1964(c).

This instruction assumes a single plaintiff suing a single defendant. It will need to be appropriately modified if there are multiple defendants. Additionally, as the vast majority of RICO conspiracies allege claims under §1962(c), this instruction is tailored to allege a conspiracy under that subsection. If a conspiracy claim alleges violations of either §1962(a) or (b), then the instruction will need to be amended accordingly.

“A plaintiff can establish a RICO conspiracy claim in one of two ways: (1) by showing that the defendant agreed to the overall objective of the conspiracy; or (2) by showing that the defendant agreed to commit two predicate acts.” American Dental Ass’n. v. Cigna Corp., 605 F. 3d 1283, 1293 (11th Cir. 2010) (quoting Republic of Panama v. BCCI Holdings (Luxembourg) S.A., 119 F.3d 935, 950 (11th Cir. 1997)). A plaintiff may establish an “agree[ment] to the overall objection” by “circumstantial evidence showing that each defendant must necessarily have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity.” United States v. Starrett, 55 F.3d 1525, 1544 (11th Cir. 1995). In Starrett, the Court found that the jury could infer that the defendant manifested an agreement to participate in a national crime organization from evidence that the defendant had been the president of the regional and local chapters of the organization, had been one of the four original members of the Florida chapter of the organization, had initiated an aggressive membership recruitment drive to solidify the organization’s position, and had personally committed thirty-four predicate acts related to the organization. *Id.* at 1547.

“A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime’s completion.” Salinas v. United States, 522 U.S. 52, 65 (1997). In Salinas, the court found that the defendant conspired to violate the RICO statute by accepting numerous bribes while knowing about and agreeing to facilitate an ongoing criminal scheme.



A RICO conspiracy plaintiff is not required to “offer direct evidence of an agreement; the existence of [the] conspiracy ‘may be inferred from the conduct of the participants.’” American Dental Ass’n., 605 F.3d at 1283. In American Dental, the court found that because the plaintiff’s allegations were “mere formulaic recitations” of a conspiracy claim, they were therefore insufficient to “support an inference of agreement to the overall objective of the conspiracy or an agreement to commit two predicate acts.

